



Board of Adjustment Case Report

City of Raleigh
Department of City Planning
One Exchange Plaza
Raleigh, NC 27601
(919) 996-2682
www.raleighnc.gov

Case File: A-138-17

Property Address: 1505 Canterbury Road

Appellant: Mark and Katherine Griffith (adjacent property owners)

Project Contact: Mark Griffith

Nature of Case: Mark and Katherine Griffith, adjacent property owners, appeal an administrative decision as to the interpretations and conclusions made by the City's Zoning Administrator in regards to potential zoning violations on a .37 acre parcel zoned Residential-4 and located at 1505 Canterbury Road.

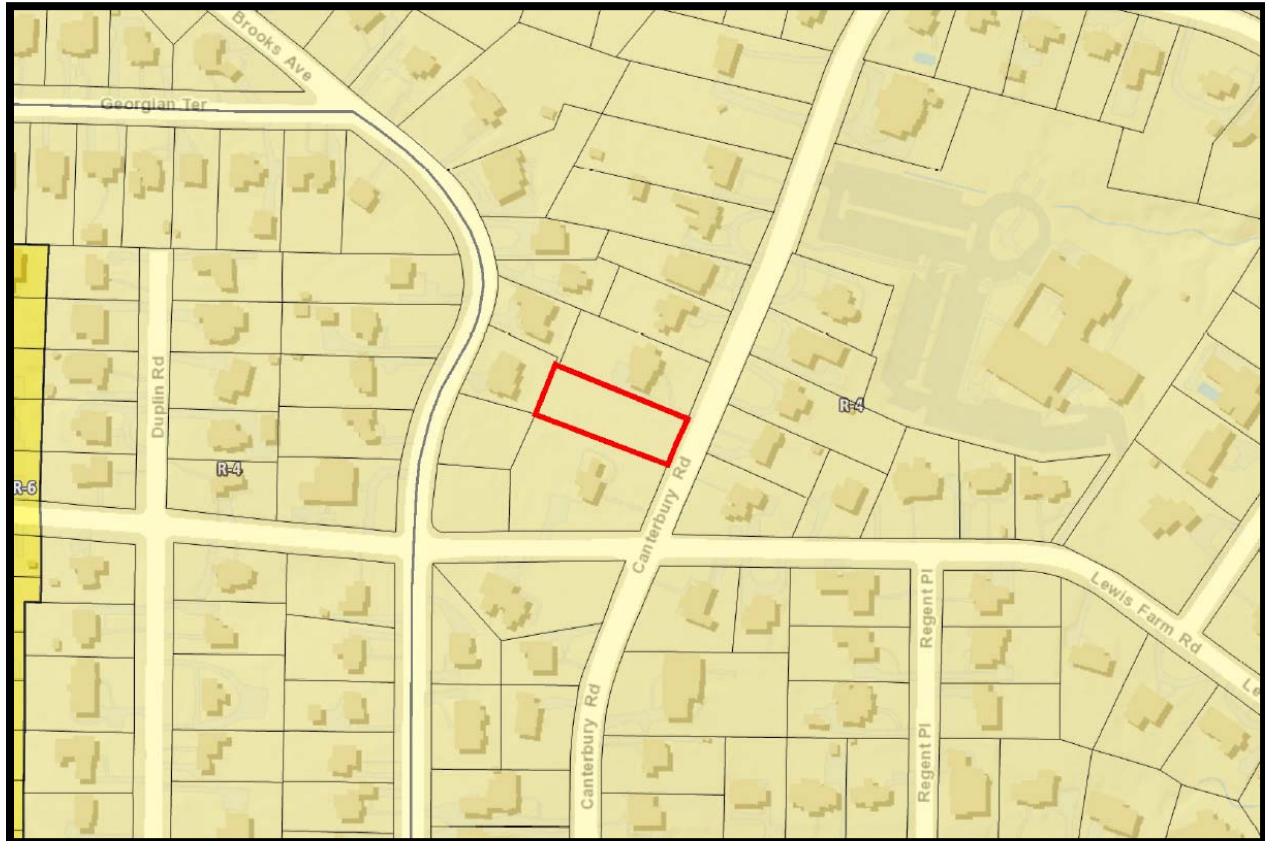


1505 Canterbury Road – Location Map

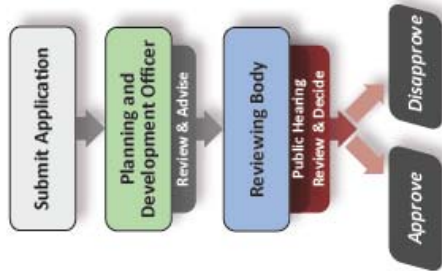
To BOA: 12-11-17

Staff Coordinator: Eric S. Hodge, AICP

**ZONING
DISTRICTS:** Residential-4



1505 Canterbury Road – Zoning Map



Sec. 10.2.11. Appeal of an Administrative Decision

A. Applicability

Any aggrieved person or any agency, officer, department, board or commission of the City, including the City Council, affected by any decision, order, requirement or determination relating to the interpretation, compliance or application of this UDO as made by an administrative official charged with the administration and enforcement of these provisions of the UDO may file an appeal in accordance with the requirements of this section.

B. Reviewing Body

Appeals of an administrative decision are heard by the Board of Adjustment except for Minor Work Certificates of Appropriateness, which are heard by the Raleigh Historic Development Commission.

C. Stay of Proceedings

1. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken (in most instances, this will be the Zoning Enforcement Administrator) certifies that, because of facts stated in the certificate, a stay would, in their opinion, cause imminent peril to life or property or that because the violation is transitory in nature, a stay would seriously interfere with the effective enforcement of this UDO. In that case, proceedings shall not be stayed except by a restraining order granted by of the reviewing body or a court, issued on application of the party seeking the stay, for due cause shown, with copy of notice to the officer from whom the appeal is taken.
2. An appeal shall not stop action lawfully approved; only actions claimed to be in violation of this UDO shall be stayed.

D. Filing Requirements

1. An appeal of any administrative decision shall be made by filing a written notice of appeal specifying the grounds for the appeal with the officer from whom the appeal is taken

and the reviewing body. Notice of appeal provided to the City Clerk is considered to be notice to the reviewing body.

2. Except when a different time period is established in this UDO, the notice of appeal shall be filed by persons who received either mailed notice or notice of decision pursuant to Sec. 10.2.1.C. within 30 days after the date of the application was decided; this time period is applicable to all representatives of such notified persons, including without limitation their tenants and option holders. For all other persons with standing, notice of appeal of any plot plan or site plan shall be filed within 30 days after the receipt from the earlier of any source of actual or constructive notice of the decision within which to file an appeal.
3. A notice of appeal of an administrative decision shall be considered made, when the notice of appeal is provided to the City Clerk and the officer from whom the appeal is taken. The date and time of filing shall be entered on the notice of appeal.
4. In addition to the notice of appeal, within 30 business days from the date of the notice of appeal, an application for an appeal of administrative decision shall be submitted to Planning and Development in accordance with Sec. 10.2.1.B.

E. Approval Process

1. Planning and Development Officer Action

- a. After notice of appeal is provided, the officer from whom the appeal is taken shall transmit to the reviewing body all the papers constituting the record upon which the action appealed from was taken.
- b. Planning and Development shall review the application for an appeal of an administrative decision in accordance with all applicable requirements of this UDO and advise the applicant.
- c. Planning and Development shall provide the notices required in Sec. 10.1.7. and Sec. 10.2.1.C.

Supp. No. 2

10 – 44
Effective Date: September 01, 2013

Part 10A: Unified Development Ordinance
City of Raleigh, North Carolina

2. Reviewing Body Action

Within 60 days after a completed application of an appeal of an administrative decision is filed, the reviewing body shall hold a quasi-judicial public hearing as set forth in Sec. 10.2.1.D.1. and provide notice as required in Sec. 10.2.1.C.6. Appeals filed to the City Manager shall not be heard at a quasi-judicial public hearing.

F. Showings

The showings for the reviewing body shall be those required for the original decision. The reviewing body may affirm or reverse the officer from whom the appeal is taken based on the applicable standards of this UDO.

**CITY OF RALEIGH
NORTH CAROLINA
INTER-OFFICE MEMORANDUM**

To: Ruffin Hall, City Manager

From: Rich Kelly, Director of Engineering Services
Tom Hosey, Director of Development Services

Date: 9/19/2017

Subject: Single-Family Dwelling Permit - 1505 Canterbury Road

MESSAGE:

Background

Mark Griffith of 1507 Canterbury Road has submitted a request to be heard before the City Council on September 19, 2017 in order to discuss perceived issues with the construction of a new home on an adjacent property at 1505 Canterbury Road. These issues generally relate to two areas: stormwater management and zoning enforcement.

Attached to this memo are two separate reports detailing the issues from these two perspectives. These reports are the result of staff in the Engineering Services and Development Services departments conducting a thorough review of the details of this project and associated permit approval processes, including verification that inspections and review processes were consistent with the Unified Development Ordinance as it existed when the project was permitted in late 2015.

Please advise if you require any additional information or have any questions.

**CITY OF RALEIGH
NORTH CAROLINA
INTER-OFFICE MEMORANDUM**

To: Tom Hosey, Director of Development Services

FROM: Alysia Bailey Taylor, Current Planning Manager

SUBJECT: Single-family Dwelling Permit - 1505 Canterbury Road (*Transaction #: 457141*)

Date: 9/19/2017

Background

On December 23, 2015, Rufty Homes, LLC, applied for a single-family dwelling permit for 1505 Canterbury Road on behalf of the property owners, Michael and Ashley Jones. During the review of this permit application Current Planning staff determined the following:

- The address for the permit was designated with R-4 zoning and the regulations of Unified Development Ordinance (UDO) Section 2.2.1 applied, and the property met the criteria to be reviewed for conformance with the “Residential Infill Compatibility” standards of UDO Section 2.2.7.
- Per UDO Section 2.2.7.C the street setback for a property developing under the infill standards is based on the range of setbacks measured based on the two closest lots in either direction along the block face. Based on this criteria and the supporting documentation submitted by the applicant, the 52 foot setback shown on the plot plan was within the allowable street setback.
- The side setbacks per UDO Section 2.2.1. were met or exceeded as they were shown on the plot plan provided by the applicant.
- The rear setback per UDO Section 2.2.1 was exceeded based on the information provided by the applicant.
- Measuring building/wall height:
 - In March of 2017 an official interpretation was provided by the Planning and Zoning Administrator indicating that wall height for residential infill (UDO Section 2.2.7.) should be measured based on the regulations associated with building height in UDO Section 1.5.7.
 - During the time of the review associated with this permit the right side elevation was measured from the foundation of the 1st floor and not average grade, and the basement was not considered based on how the UDO regulations had been applied by staff prior to the official March 2017 interpretation. (*Prior to March 2017 the building height regulations provided in UDO Section 1.5.7 were not considered.*) Based on staff’s application of the UDO regulations during the time that this permit was reviewed and UDO Section 2.2.7.D., which indicated that the maximum allowed wall height adjacent to the side property line is 22 feet, the proposed wall height complied with the application of the UDO standards at the time.
 - During the time of the review associated with this permit the left side elevation was measured from the foundation of the 1st floor and not average grade, and the basement was not considered based on how the UDO regulations had been applied by staff prior to the official March 2017 interpretation. Based on the UDO application during the time that this permit was reviewed and UDO Section 2.2.7.D., which allows for an addition foot of height for each foot of horizontal distance the wall is moved from the side setback line, the height of the proposed residence was found to be in compliance with the UDO regulations.

- No pre or post land elevation information was provided in the permit documentation.

Results

- On January 7, 2016 Current Planning staff approved the permit for 1505 Canterbury Road.
- On February 13, 2017 Current Planning staff approved the zoning inspection.

**CITY OF RALEIGH
NORTH CAROLINA
INTER-OFFICE MEMORANDUM**

To: Blair Hinkle, PE, Assistant Engineering Services Director

From: Lauren Witherspoon, Stormwater Inspections Supervisor

Date: 9/13/2017

Subject: Single-Family Dwelling Permit - 1505 Canterbury Road

MESSAGE:

Background

On December 23, 2015, Rufty Homes, LLC, applied for a single-family dwelling permit for 1505 Canterbury Road on behalf of the property owners, Michael and Ashley Jones. Following the review of this permit application, Stormwater staff determined the following:

- The total lot size was less than one acre, and therefore exempt from being required to install permanent 'Active Stormwater Control Measures' per Section 9.2.2 of the City's Unified Development Ordinance (UDO).
- An erosion and sedimentation control plan was not required prior to issuing the permit and approval for land disturbance activity in accordance with Section 9.4.4 (Standards for Land-Disturbing Activity) of the UDO. Section 9.4.4 requires that a sedimentation control plan must be approved at least 30 days prior to any land-disturbing activity of more than 12,000 square feet (sq. ft). The plot plan submitted with the permit application indicated that the proposed area of disturbance was 10,570 sq. ft.

After these determinations, a permit was issued to the property owners on January 26, 2016. Based on an inspection performed by City of Raleigh Zoning staff, land clearing at 1505 Canterbury Road may have begun in February 2016. Stormwater staff was not aware of (nor required to be made aware of) the land disturbance being conducted because no stormwater permits were issued.

On October 3, 2016, Stormwater staff received a complaint from Zachary Bolen (owner of 1508 Brooks Avenue) regarding stormwater runoff onto his property and inefficient erosion control measures on 1505 Canterbury Road. Mr. Bolen's property is located behind and downstream from the 1505 Canterbury Road property. At that time, Stormwater staff inspected the worksite at 1505 Canterbury Road and concluded that sediment and erosion control measures were in compliance. In addition, it was determined that Stormwater staff could not require any additional runoff controls due to the exempt status of the property per the UDO - Section 9.2.2.

Hurricane Matthew impacted Raleigh on October 8, 2016, which resulted in over five inches of rainfall. Following this rain event, Stormwater staff received a complaint from Katherine Griffith (owner of 1507 Canterbury Road) on October 18, 2016 with concerns that:

- Rufty Homes, LLC, had exceeded the 12,000 sq. ft. threshold for land disturbance;

- Sediment was in her driveway; and
- Standing water was in the back of her home.

Based on the findings from the inspection at 1505 Canterbury Road prior to and following Hurricane Matthew, Stormwater staff concluded that sediment and erosion control measures were in compliance, no sediment was observed at the 1507 Canterbury Road property, and the City could not enforce additional runoff controls due to the UDO - Section 9.2.2 exemption. In addition, Stormwater staff determined that less than 12,000 sq. ft. of land disturbance was occurring at the time of the inspection and that no grading permit was required.

On February 14, 2017, the newly constructed house on 1505 Canterbury Road received a Certificate of Occupancy with prior approvals from each trade inspection group. The house did not need final inspection approval from Stormwater staff because no stormwater permits were issued or required.

On June 20, 2017, Stormwater staff received a complaint from Mark Griffith (1507 Canterbury Road) regarding runoff from 1505 Canterbury Road. On June 21, 2017, Stormwater staff met with the property owners to discuss their concerns. At this time, Stormwater staff offered to contact Rufty Homes, LLC, to provide options for alleviating stormwater runoff from the property. It was also explained that the City could not require the builder to address the issues due to the regulatory exemptions that were in place as of the date of permit application.

Results

On July 11, 2017, Stormwater staff met with Rufty Homes, LLC, representatives and the property owner of 1505 Canterbury Road. During this meeting, Stormwater staff observed that the majority of stormwater from the property is discharged through a retaining wall at the rear of the property, which provides some storage prior to discharging onto the Bolen's property. There appeared to be one area that was receiving concentrated flow of stormwater where a retaining wall ends at the north end of the property and adjacent the driveway.

As a result of further inspection and discussion with the parties involved, Stormwater staff issued a Not in Compliance report on September 5, 2017, received on September 11, 2017, due to the continued concentration of stormwater flow, displacement of groundcover, and steep slopes. Following the Not in Compliance report, Rufty Homes, LLC, informed Stormwater staff that a small berm had been constructed to allow stormwater to enter the drain. On September 12, 2017, Stormwater staff met with Rufty Homes, LLC representatives, the property owner of 1505 Canterbury Road, and his representation. During this meeting Rufty Homes, LLC verbally committed to establish a plan and stabilize this slope by September 25, 2017. Staff believes this to be the extent of our regulatory authority under the UDO, and has encouraged neighboring property owners who are experiencing property damage to seek alternative remedies.

It is worth noting that, while it did not affect this case due to timing, the adoption of TC-2-16 in November of 2016 has helped to address this type of impact being experienced by neighbors of newly-permitted infill development. The changes to the UDO that resulted from TC-2-16 include impervious area limitations based on zoning type. All single-family dwelling permits are now reviewed by Stormwater staff for impervious limits including properties that were previously exempt from Section 9.2 of the UDO. However, the 1505 Canterbury Road property is designated as R-4 zoning which would have had a TC-2-16 impervious limitation of 38% (if

approved after November 2016). The plot plan submitted with the permit application indicates an approximate 30% of total impervious on the property. If the 1505 Canterbury Road property had been permitted after November 2016, this property would have been in compliance with the TC-2-16 limitation and no stormwater control measure and/or downstream flood study would have been required.

The Stormwater Management Program added an inspector position in May 2017 in order to dedicate a Stormwater Inspector specifically for this type of infill residential development. Among this position's responsibilities is to encourage builders during construction to alleviate impacts to downstream property owners when situations such as these occur, and to assist the parties involved in resolving similar issues moving forward during the construction phase of projects.

It is the opinion of the Stormwater Management Program that the regulations governing development of this type were applied correctly, and that staff acted appropriately in carrying out those regulations. Staff will continue to facilitate discussion between the parties to assist them in finding resolution, to the extent possible, moving forward.

Official Zoning Code Interpretation



RALEIGH
DEPARTMENT OF
CITY PLANNING



Department of City Planning | 1 Exchange Plaza, Suite 300 | Raleigh, NC 27601 | 919-996-2626

Requested Interpretation		Case Number
UDO Sec 1.5.7.A defines BUILDING HEIGHT as "measured from average grade in both number of stories and feet to the TOP OF THE HIGHEST POINT OF A PITCHED OR FLAT ROOF,..." 2.2.7.D is the code with which we have been deemed non-compliant. It addresses maximum allowed wall height and DOES NOT REFERENCE GRADE.		UI-3-17
Site Address/PIN: 3109 Devonshire Dr. Raleigh NC 27607		
Date Submitted: 3/2/17	Date Issued: March 7, 2017	Code Sections Affected: 1.5.7.A and 2.2.7.D

STAFF ANALYSIS

In drafting this response staff believes that the question being asked by the applicant is how wall height is determined in relation to Section 2.2.7. This section of the UDO (2.2.7) regulates the maximum wall height of a building. The UDO contains a few sections that relate to building height.

Section 1.5.7 contains the regulations for determining building height. Building height refers to the total height of the building from the average grade to the top of the highest point of the roof. This section contemplates measuring height on sloping lots and on lots with no grade change. Wall height is a portion of the overall height.

Section 2.2.7 establishes the regulations for residential infill construction. These regulations require an additional standard for wall height, provided the site qualifies as infill in accordance with section 2.2.7.B. This section requires a maximum wall height of 22 feet at the minimum setback line. The wall height can increase by one foot for each foot of side yard setback added. The wall height can be taller if the properties immediately adjacent have taller walls.

STAFF INTERPRETATION

The UDO provides the regulations that describe how wall height is measured. Since wall height is a portion of building height the same methodology described in section 1.5.7 would be used to determine wall height. The methodology used to determine wall height is described in Section 1.5.7; staff uses item A.3, 4, and 5 as the methodology to determine wall height. These sections reference using the average of front and rear wall planes at grade as the starting point as to how wall height is measured.

Therefore, the height of a wall shall be measured in the same fashion as the height of a building. The maximum wall height as specified in the UDO is 22-feet and the method of determining the wall height is based upon the average the of the front and rear wall planes at grade.

SIGNATORY

Travis R. Crane, Planning and Zoning Administrator

Appeal of Administrative Decision Application



RALEIGH
DEPARTMENT OF
CITY PLANNING



Department of City Planning | 1 Exchange Plaza, Suite 300 | Raleigh, NC 27601 | 919-996-2626

Nature of appeal (If more space is needed, submit addendum on separate sheet): Please see the attached Notice of Appeal dated September 27, 2017, to the City Clerk and Gary Mitchell outlining the grounds of appeal and its Exhibits A-1 and A-2 which include, among other things, a memo from Gary Mitchell containing administrative decisions serving as the basis of the administrative decisions being challenged.		OFFICE USE ONLY Transaction Number A-138-17
Provide all previous transaction numbers for Coordinated Team Reviews, Due Diligence Sessions or Pre-Submittal Conferences in the spaces below. If this property was the subject of a previous Board action, provide the case number.		
378347		

GENERAL INFORMATION		
Property Address 1505 Canterbury Road	Date October 8, 2017	
Property PIN 0794799405	Current Zoning R-4	
Nearest Intersection Canterbury Road / Lewis Farm Road	Property size (in acres) .37 acres	
Property Owner Information		
Property Owner Mark and Katherine Griffith	Phone 919 782-2589	Fax n/a
Owner's Mailing Address 1507 Canterbury Road (27608)	Email mark.griffith@troutmansanders.com	
Contact Person Information		
Project Contact Person Mark Griffith	Phone 919 782-2589	Fax n/a
Contact's Mailing Address 1507 Canterbury Road (27608)	Email mark.griffith@troutmansanders.com	
Property Owner Signature	Email mark.griffith@troutmansanders.com	
Notary Sworn and subscribed before me this 9th day of October, 2017	Notary Signature and Seal My Commission Expires: 6/16/2019	

RECEIVED
CITY CLERKS OFFICE

9/27/17 *MS*
10:13 A.M.

TO: Gail G. Smith, City Clerk
Gary Mitchell, Planning and Zoning Administrator

FROM: W. Mark Griffith, Esq., and Katherine B. Griffith (the "Appellant")

DATE: September 27, 2017

This matter was brought before the Raleigh City Council during its regular meeting on September 19, 2017, and was remanded during that meeting to the Growth and Natural Resources Committee for review. This appeal is being made to preclude any future holding that the issues referenced herein have been waived and/or not properly preserved by the Appellant.

NOTICE OF APPEAL

Please accept this Notice of Appeal as to the interpretations and conclusions referenced below in a) the letter attached hereto as Exhibit A-1 from Gary Mitchell to Mark Griffith, dated August 25, 2017, but issued on August 29, 2017, by email.

Grounds for Appeal – Exhibit A-1

In Exhibit A-1, Mr. Mitchell is responding to an email from the Appellant to Nicolette Fulton, Associate City Attorney, dated August 16, 2017, and attached hereto as Exhibit A-2. In Exhibit A-2, the Appellant referenced numerous zoning violations at 1505 Canterbury Road (material height violation, too many floors, etc.), a property adjacent to the Appellant's home. Rather than specifically review the violations, Mr. Mitchell stated that Exhibit A-2 was a challenge to the building permit and Certificate of Occupancy issued for 1505 Canterbury Road, and was therefore untimely because it was being made more than 30 days after the Certificate of Occupancy had been issued.

Mr. Mitchell's decision in Exhibit A-1 is being appealed on the following grounds:

- 1) There is no provision, and Mr. Mitchell did not provide any such cite, in Raleigh's Unified Development Ordinance ("UDO") which states that any and all violations of the UDO on a property are precluded from enforcement if the property at issue has a Certificate of Occupancy that has not been challenged within 30 days of its issuance. The Appellant has raised violations of the UDO at 1505 Canterbury Road that make the residential structure located at 1505 Canterbury Road an illegal structure under the UDO. The City regularly issues notices of violation for zoning violations after a property has received its building permit and certificate of occupancy.

For instance, Section 1.1.10 of the UDO provides the City with four types of remedies for enforcement of its violations – equitable remedy, injunction, order of abatement, and criminal – in addition to those specific civil penalties further provided

in the UDO. Section 10.4.1.A.1 and A.3 specifically provide for enforcement actions against owners and builders in violation of Chapters 1 through 7 and 11 of the UDO – all of the violations brought to Mr. Mitchell’s attention in Exhibit A-2 fall within this scope. Violators are subject to civil penalties under Section 10.4.2 of the UDO and those further remedies at the City’s disposal under Section 1.1.10 of the UDO. There is no caveat or exception to any of these enforcement provisions stating that owners and builders in the City of Raleigh are free from enforcement under the UDO for zoning violations like the ones we have alleged here if they can just make it 30 days past the issuance of a Certificate of Occupancy without getting caught, and especially would not make sense here when the building permit application submitted to the City contains a material inaccuracy concerning the amount of land to be disturbed. *See also City of Raleigh v. Fisher*, 232 N.C. 629 (1950) (holding that the fact landowners had carried on an illegal use on a property for a period of years with the knowledge of a municipality that it was against the zoning laws did not estop the municipality from enjoining the illegal use); *and see Karagiannopoulos v. City of Lowell*, 2008 U.S. Dist. LEXIS 46762 (stating that a municipality cannot be estopped to enforce a zoning ordinance against a violator by the conduct of its officials in encouraging or permitting such violator to violate such ordinance in times past. . . . [T]he law must be so written; for a contrary decision would require an acceptance of the paradoxical proposition that a citizen can acquire immunity to the law of his country by habitually violating such law with the consent of unfaithful public officials charged with the duty of enforcing it) (citing *City of Raleigh v. Fisher*).

- 2) As the Planning and Zoning Administrator, Mr. Mitchell is tasked by Section 10.2.14 of the UDO with issuing a written interpretation of the UDO sections addressed to his attention. In this case, Mr. Mitchell has not issued such an interpretation but rather has provided a legal conclusion apparently on behalf of the City alleging the application of N.C. Gen. Stat. § 160A-388(b1) to the Appellant’s request in Exhibit A-2. Mr. Mitchell’s August 25, 2017 letter to Appellant is, at the least, a tacit consent of a public official who has a duty to faithfully interpret and enforce the legal requirements of the UDO. At its worst, Mr. Mitchell’s failure to make an interpretation of the UDO based on the facts presented by the Appellant, merely because a Certificate of Occupancy has been issued, allows a citizen to acquire immunity to the law applicable to their property and violates the rights of other neighbors such as the Appellant who rely on a public official’s obligation to faithfully discharge their duties under the law. *See Fisher and Karagiannopoulos, infra*.

Griffith, Mark

From: Mitchell, Gary <gary.mitchell@raleighnc.gov>
Sent: Tuesday, August 29, 2017 3:53 PM
To: Griffith, Mark
Cc: Bowers, Kenneth; Crane, Travis; Hodge, Eric; Pearce, Robert M.
Subject: Response to your concerns
Attachments: Gary D Mitchell AICP.vcf; Mark Griffith.docx

Importance: High

Please see attached,

Gary

Gary D. Mitchell AICP

City of Raleigh
Planning & Zoning Administrator
City Planning
919-996-2625 Work
gary.mitchell@raleighnc.gov
1 Exchange Plaza
Raleigh, NC 27502
www.raleighnc.gov



City of Raleigh
North Carolina



To: Mark Griffith, Esq.

From: Gary D. Mitchell, Planning & Zoning Administrator

Date: August 25, 2017

Re: Concerns about 1505 Canterbury

Mr. Griffith,

It was a pleasure to meet with you this morning. Upon examining the situation I understand your concerns however, the permit was issued in January of 2016 and a Final and a Certificate of Occupancy/Compliance (CO) was issued by the City on February 2017. Based on North Carolina State Statute 160-388 (b1) subsection 3, any administrative decision may be appealed with 30-days of the date of the administrative decision(s). Issuance of a building permit as well as the issuance of the CO is an administrative decision. In staff's opinion the appeal period has passed. The Department of Development Services issued the permit and the CO and you may want to contact Development Services in regard to your specific issue(s).

Sincerely,

Gary D. Mitchell
Planning & Zoning Administrator

Griffith, Mark

From: Griffith, Mark
Sent: Wednesday, August 16, 2017 9:47 PM
To: Nicolette Fulton
Cc: Jim Spangler; Ben Kuhn; Zachary C. Bolen; Courtney Gmail; kbgriffith@me.com; Griffith, Mark
Subject: 1505 Canterbury Road

Nicolette, many thanks for your time. As mentioned, below are proposed UDO violations not dealing with stormwater and land disturbance permits:

1. Section 2.2.1 D1 of the UDO establishing a 40 foot height maximum and 3 story maximum for 1505 Canterbury Road: It is our position based on Sections 1.5.7.A.1 and 1.5.7.A.2 of the UDO that 1505 Canterbury Road is in violation of the 40 foot height maximum. Section 1.5.7.A.1 of the UDO provides that "Building height is measured from average grade in both number of stories and feet to the top of the highest point of a pitched or flat roof, not including a maximum parapet wall encroachment." Likewise, Section 1.5.7 A.2. of the UDO states that "Average grade is determined by calculating the average of the highest and lowest elevation along pre-development grade or improved grade (whichever is more restrictive) along the front of the building parallel to the primary street setback. Where mass-grading has been approved by the City, average grade shall be considered the improved grade following such mass grading." In this case, the owner and builder have apparently asked the City to measure the compliance of 1505 Canterbury Road with the height restrictions from the substantially elevated grade which is not allowed unless they have received a "mass-grading permit." The owner and builder's own plans show 39 feet from the new grade which is approximately 8 feet or more above what the "average grade" would be per the "pre-development grade". Without an approved mass grading permit, which is undisputed they did not seek or receive, the developer does not get the benefit of height measured based on the "improved grade following such grading" per UDO 1.5.7.A.2. It certainly appears to us on its face that 1505 Canterbury Road violates in a material manner the UDO's plain terms as to applicable height maximum, because as measured along the pre-development grade (the more restrictive based on the massive amount of fill on the property which raised the "improved grade", and without an approved mass grading permit), the residential structure on the property is substantially higher than the 40 foot maximum under UDO 1.5.7.A.1 and 1.5.7.A.2. Accordingly, this is an illegal structure due to the illegal height in excess of 40 ft as measured by the standards set forth in the UDO.

For the same reason, Section 1.5.7.A.3 of the UDO does not allow 1505 Canterbury Road to have a "fourth story" because the owner and builder are again measuring from the improved grade in contravention of Section 1.5.7 A.2 of the UDO. It certainly seems that the parties associated with 1505 Canterbury Road are trying to achieve the "fourth floor exception" through the equivalent of stacking dirt in front of a fence and saying now that they can have four stories instead of three. This is basically the same thing as building an illegal 10' high fence and arguing it is not taller than the maximum allowed by the UDO because it somehow becomes "less tall" with several feet of dirt piled up against it. The dirt piled up against the foundation or fence (artificially raising the "pre-development grade") must not be taken into account in determining the height of the structure per the terms of the UDO.

2. Infill Compatibility Regulations in Section 2.2.7.D.1 of the UDO establishing a side setback plane height maximum of 22 feet: Sections 1.5.7.A.1 and A.2 require this measurement to be made from the average "pre-development" grade, and thus, the wall plane of the house at 1505 Canterbury Road which is adjacent to the side property line (shared with 1508 Canterbury Road) appears to be in violation of this height limitation set forth in the Residential Infill Regulations. Per UDO 2.2.7.B. such regulations are applicable because (a) the total site area is less than 5 acres (.37 acres); (b) at least 50% of the side and rear property lines abut detached or attached building types (in fact 100% do); (c) the lot in question, Lot 2, has been recorded for at least 20 years (Lot 2 was subdivided per a 1941 Plat recorded at Book of Maps 1941, Page 57 . . . over 70 years ago), and (d) the property is not in a HOD or NCOD.

3. Section 2.2.1. B3 of the UDO providing for a 10 foot side setback in Zone R-4: The wall in the front of 1505 Canterbury Road on its north side is connected to the house and supports its foundation and therefore is subject to Section 2.2.1.B3. It is part of the "building and structure" and dwelling, and thus, is subject to the side setback restriction. The house is unsupportable without this wall. A further question we have is why this wall is not on the plot plan? It is massive and its inclusion would have put the City and others on notice of the incredible change of grade the owner and builder made to 1505 Canterbury Road. This wall was built substantially into the ground with massive footings. Based on our observations this wall is within 10 feet of the property line and therefore is in violation of the 10' setback requirement in UDO 2.2.1.B3.

We request that we be allowed a meeting with you and the City officials reviewing these assertions as soon as possible.

Please feel free to call us with your questions and comments.

Again, many thanks.

Mark

Mark Griffith

Direct: 919.835.4172 | Mobile: 919.559.7038 | Internal: 14-4172
mark.griffith@troutmansanders.com

TROUTMAN SANDERS
434 Fayetteville Street, Suite 1900
Raleigh, NC 27601
troutmansanders.com

OWNERS OF PROPERTY LOCATED WITHIN 100 FEET OF 1505 CANTERBURY ROAD

William Dirk Hage
Penny Small Hage
1501 Canterbury Road
Raleigh, NC 27608

Martha W. Highsmith
1502 Canterbury Road
Raleigh, NC 27608

Michael D. Jones
Ashley T. Jones
1505 Canterbury Road
Raleigh, NC 27608

Judy L. Swenson
1506 Canterbury Road
Raleigh, NC 27608

William Mark Griffith
Katherine B. Griffith
1507 Canterbury Road
Raleigh, NC 27608

Duncan Gibson
Karen G. Gibson
1509 Canterbury Road
Raleigh, NC 27608

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